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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 1256

ALGOMA NET COMPANY,
Petitioner, and Respondent below,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent, and Petitioner below.

PETITION FOR WRIT OF CERTIORARI
To The United States Circuit Court
Of Appeals for the Seventh Circuit
And
BRIEF IN SUPPORT THEREOF

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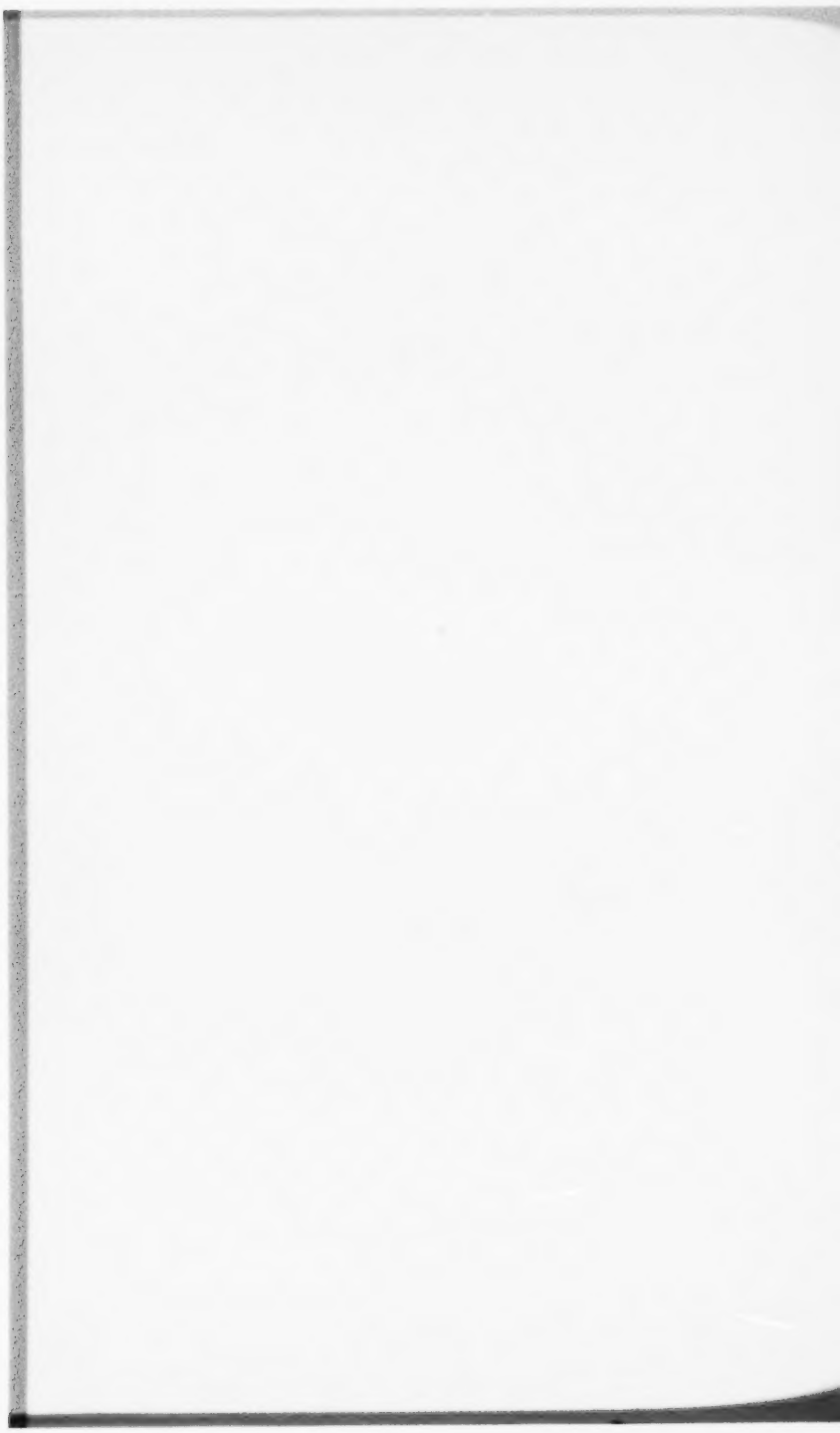

ERRATA.

Page 12, sixth line from bottom of page, "Kupples" should be spelled "Cupples".

Page 15, in paragraph 7(2), the blank citation should be 122 F. (2d) 809.

Page 21, lines 6 and 7, "Wisconsin" Act should be "National" Act.

Page 21, ninth line from bottom, "*Devega*" should be "*Davega*".

Page 22, line eight, "*Dagega*" should be "*Davega*".

Page 24, line nine, "so" should be stricken, and the word "on" inserted in lieu thereof.

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No. .....

ALGOMA NET COMPANY,
Petitioner, and Respondent below,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent, and Petitioner below.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Supreme Court of the United States:

The above named petitioner respectfully petitions for a Writ of Certiorari to review a decision of the United States Circuit Court of Appeals for the Seventh Circuit, 124 F. (2d) 730 (C. C. A. 7th, 1941), rendered December 9, 1941, confirming and enforcing an Order made by the National Labor Relations Board on November 23, 1940. (The Decision is set forth in full at pp. 450-456, inclusive, of the Transcript of Record, and as Appendix (A) of this Petition, while the Order of the National Labor Relations Board is set forth in full at pp. 83-100, inclusive, of the Transcript of Record.)

Summary Statement of the Matter Involved.

This action arises upon petition by the National Labor Relations Board to the United States Circuit Court of Appeals for the Seventh Circuit, for the enforcement of an Order issued by the Board against the Algoma Net Company pursuant to Section 10(c) of the National Labor Relations Act (49 Stat. 449, U. S. C., Supp. V., Title 29, Section 151, *et seq.*) (R. 443-447).[1]

The Algoma Net Company is a Wisconsin corporation, with its principal office and place of business in Algoma, Wisconsin, engaged in the manufacture and sale of fly nets, hammocks, baby swings, and related products, employing approximately 150 persons.

The National Labor Relations Board is an administrative body created by the National Labor Relations Act (cited above).

On, or immediately before, February 6, 1939, petitioner laid off its employees Kaus, Trainor, and Ferron (R. 87, 157, 175, 194). The Board contends that these lay-offs were motivated by the union membership and activity of the employees involved, predicated upon testimony that: An A. F. L. organization meeting was held on February 4, 1939 (R. 86; 153-156); Fischer, a minor supervisory official, made anti-union statements (R. 86, 87, 149, 150, 169, 170, 175, 193, 194, 240-243, 250, 251); superintendent Anderegg expressed anti-union and anti-racketeering opinions (R. 87, 171, 214, 265, 266, 270); new employees were hired following the lay-offs (R. 141, 142, 264, 274); the lay-offs seemed to depart from the company's regular lay-off policy (R. 205, 206, 211, 239, 240, 264, 271-274). Petitioner contends that the lay-offs were not motivated by the union activities of these three employees, but were a business necessity, predicated upon testimony that: As conceded

1. All references to the Record (R.) refer to the printed Transcript of Record, filed herewith, in accordance with the rules of this Court.

by the Board (R. 89), surplus stock on hand and a dearth of orders and of raw materials, prior to February 4, necessitated a crew reduction (R. 146, 195, 284, 293, 294, 299, 308-323, 359-361, 376, 377, 388, 391-394, 412, 413, 424, 432); similar lay-offs at the plant and involving these same employees had occurred in past years (R. 174, 190, 192, 199, 200, 259, 260, 271, 289, 290, 302-304, 333-338, 360, 361, 380-382, 388, 389, 394, 395, 360, 361, 411); the lay-offs followed the regular company policy (R. 150, 157, 194, 203-205, 294, 295, 323-327, 386, 391, 392, 406, 411, 412); the lay-off orders were given the day before the meeting of February 4 (R. 308-323); Kaus and Ferron were actually laid off before the meeting of February 4, (R. 304-305); new employees hired were placed on jobs these men could not fill (R. 205, 264, 265, 286, 511); statements made by Fischer were made without authority or knowledge of petitioner, by a minor supervisory official (R. 168-170, 350, 351, 382-387); making of the bulk of alleged anti-union statements was denied (R. 87, 242, 243, 294, 295, 350-354, 377-387, 420, 421); anti-union statements made had no effect upon the employees (R. 158, 255, 256, 269, 297, 384, 385, 394, 404-417); union members in the plant were given preferential treatment (R. 156, 253-255, 297, 329-333, 338, 339, 379-381, 394, 408-417); petitioner lacked an anti-union animus or knowledge of union activities prior to these lay-offs (R. 133, 136, 329, 330, 342, 349, 350, 380, 381, 394, 416, 417).

On the night of February 7, 1939, Kaus, Trainor, and Ferron, one or more of them drunk, violating a series of company rules, stole the key to petitioner's plant, entered, solicited union memberships from employees on their jobs, severely beat up one Mr. Lumaye for refusal to join, used vile language in the attempt, damaged his clothing, damaged company property, and committed assault, battery, and other violations of the criminal statutes of the State of Wisconsin. (See Wisconsin Statutes violated in ap-

pendix (B) to this petition; R. 90, 100, 109-117, 125-128, 134-145, 159, 167-169, 184, 185, 206-208, 244, 354, 355, 390-399, 407, 408.) On February 8, Kaus was discharged (R. 91, 210, 217-218). On February 13, Kaus was reinstated at the request of the Wisconsin Labor Board (R. 91). On February 20, Kaus, Trainor, and Ferron were finally discharged (R. 92, 103-105, 212-214). The Board contends that these discharges were discriminations constituting unfair labor practices, predicated upon testimony that: Company rules were not previously enforced (R. 95); petitioner posted a notice that the employees could join the union or not, in their own free choice (R. 93, 94); petitioner addressed an open letter to the Wisconsin Labor Board, condemning outside labor leaders and racketeers (R. 92, 93). The company denies discrimination, and contends justification for the discharges predicated upon testimony that: The Wisconsin Labor Board and the A. F. L. originally agreed with petitioner's position (R. 137-141, 160, 375, 376); the Wisconsin Industrial Commission denied unemployment benefits to Kaus for these reasons (R. 292, 293, 435, 436); important company rules were violated, previous violations of which had never gone unpunished to petitioner's knowledge (R. 126, 148, 151, 152, 163, 209, 210, 241, 242, 250, 270, 328, 329, 342, 387, 418, 419).

On February 21, 1939, pursuant to its open letter to the Wisconsin Labor Board, petitioner shut down its plant A operations, involving 34 employees. On February 27, the plant was reopened following conferences with the Wisconsin Labor Board. Upon the background of testimony stated above, the Board contends such shut down constituted discrimination. Petitioner contends that the shut down was necessitated to protect property and insurance rates against threatened confiscation (R. 96, 227-230), and was reopened upon an assurance of protection by the Wisconsin Labor Board (R. 345, 346).

On March 18, 1939, petitioner offered to reinstate these three (R. 270). They failed to accept the offer (R. 164, 165). Again petitioner offered reinstatement (R. 235). Again the offer was refused (R. 95, 130, 131). From the date of discharge to the dates of these offers, none of the three requested reinstatement (R. 120).

During all of this time, the Wisconsin Labor Relations Board attempted an adjustment of the dispute, finally effecting a settlement. On February 8, 1939, Rauch, a representative of the Wisconsin Board, and Heymanns, an A. F. L. representative, conferred with petitioner relative to unfair labor practice charges filed with the Wisconsin Board on that date (R. 91, 137-140). Partial adjustments were reached on February 9, 1939, involving a reinstatement of the three and the posting of a Wisconsin Board notice to employees (R. 91, 140, 141, 160, 198, 269, 342, 344, 394-396). On February 20th, petitioner wrote the Wisconsin Board, upsetting the tentative settlement, and requested the Board to reenter the case (R. 92, 93, 106, 107, 114, 115, 267). On February 25, 1939, Handrich, the Wisconsin Board representative, conferred in Algoma with petitioner (R. 94, 120, 124). Following a full discussion of the facts of the case, not heretofore presented to the Wisconsin Board, Handrich approved the actions of the company, refused to request reinstatement of the three employees, and advised petitioner to proceed with its business upon the informal dismissal of charges stated there (R. 146, 147, 285-288, 345, 346, 368, 369). Pursuant to this understanding with the Wisconsin Board, petitioner reopened its plant A on the next working day (R. 94). The National Labor Relations Board was not called into the matter by the union until March 7th, after the Wisconsin Board had concluded its administration over these matters and granted a dismissal (R. 91, 157).

Pursuant to charges filed by the A. F. L. (R. 1-3), the National Labor Relations Board issued its complaint and

notice of hearing on May 26, 1939 (R. 3-8), alleging violations of Sections 8(1), (3) and 2(6), (7) of the National Labor Relations Act. The answer, as amended (R. 9-14), denied the allegations, and pleaded lack of jurisdiction. Hearing was conducted from June 5 to June 9, 1939, inclusive, at Algoma, Wisconsin.

On February 8, 1940, the trial examiner filed his intermediate report, in substantially the same terms as the Board's ultimate Order, except that the examiner did not recommend making whole the employees laid off in plant A (R. 42-43). On March 13, 1940, petitioner filed exceptions to the intermediate report (R. 44-75).

On November 23, 1940, the Board issued the Findings of Fact, Conclusions of Law, and Order (R. 83-100), finding petitioner guilty as charged, and ordering it to cease and desist from the unfair practices so found, to reinstate these three employees with back pay, to make whole the 34 employees laid off in plant A, to post notices that petitioner would cease and desist from the unfair practices so found, and to take the usual affirmative steps related thereto.

On May 31, 1940, the Board petitioned the United States Circuit Court of Appeals for the Seventh Circuit for an Order of Enforcement (R. 442-447). On October 31, 1941, the company answered such petition, alleging lack of jurisdiction in the National Board because of the Wisconsin Labor Board proceedings, lack of substantial evidence to support the Board's Findings, Conclusions, and Order, and invalidity of that Order (R. 448). The matter was argued before the Circuit Court of Appeals on November 14, 1941 (R. 449).

On December 9, 1941, the Circuit Court of Appeals rendered its Decision, granting the Board's request for enforcement, and finding that the National Labor Relations Board had jurisdiction to act despite the disposition of the matter by the Wisconsin Labor Board, finding substantial

evidence to support the Board's Order, based principally upon the anti-union statements of the company and minor supervisory officials, but otherwise admitting legitimate grounds for the lay-offs and discharges, and finding the Order of the Board to be valid (R. 450-456). On January 3, 1942, the Court filed its decree, enforcing the Order of the Board in the same terms as the original Board Order (R. 462-464).

Statement as to Jurisdiction.

The Supreme Court of the United States has jurisdiction to review the Decision and Decree of the United States Circuit Court of Appeals for the Seventh Circuit under the provisions of the Act of Congress of June 25, 1936, Chapter 804, 49 Stat. 1921, U. S. C., Title 29, Section 160(e), being that provision of the National Labor Relations Act specifically providing for review of the Decree of the Circuit Court of Appeals upon Writ of Certiorari as provided in Section 347 of Title 28, and, hence, under the provisions of Section 240 of the Judicial Code, as amended by the Act of Congress of February 13, 1925, Chapter 229, 43 Stat. 938, U. S. C. Title 28, Section 347(a), conferring jurisdiction upon the Supreme Court of the United States to require by certiorari that the Decree of the Circuit Court of Appeals be brought up.

The United States Circuit Court of Appeals rendered its Decision on December 9, 1941, and filed the Decree (R. 462) on January 3, 1942. The Opinion of the Court is officially reported in 124 F. (2d) 730 (C. C. A. 7th, 1941), and, as aforementioned, is attached at the end of this Petition and Brief as Appendix (A).

In successive orders of December 31, 1941 (R. 461), January 28, 1942 (R. 467), February 26, 1942 (R. 470), and April 4, 1942 (Appendix (C), attached at the end of this Petition and Brief), and May 2, 1942 (attached as Appendix (D) at the end of this Petition and Brief),

the United States Circuit Court of Appeals for the Seventh Circuit stayed the execution and enforcement of its Decree to and including June 3, 1942.

In successive and appropriate orders of March 30, 1942 (R. 471), May 2, 1942 (R. 471), and May 9, 1942 (R. 472), Mr. Justice Byrnes extended the time for filing this Petition to and including May 25, 1942.

The case being one of petition by the National Labor Relations Board for enforcement of its own Order (R. 443), and the Court having granted the Petition for Enforcement (R. 456), and issued its Decree so ordering (R. 462-464), this petition brings the matter within the review provisions of U. S. C. Title 29, Section 160(e), set forth above, granting special jurisdiction in this type of case, and within the provisions of U. S. C. Title 28, Section 347(a), set forth above, granting general jurisdiction to this Court upon Petition for Writ of Certiorari.

Some of the cases which petitioner believes substantiate the jurisdiction of the Court are as follows:

Allen-Bradley Local 1111, etc. v. *Wisconsin Employment Relations Board,* 62 S. Ct. 820 (1942).

National Labor Relations Board v. *Virginia Electric & Power Co.,* 86 L. Ed. (Adv. Op.) 306 (1941).

National Labor Relations Board v. *Fansteel Metallurgical Corp.,* 306 U. S. 240 (1939).

National Labor Relations Board v. *Sands Mfg. Co.,* 306 U. S. 332 (1939).

Southern S. S. Co. v. *National Labor Relations Board,* 62 S. Ct. (Adv. Op.) 886 (1942).

National Labor Relations Board v. *Express Publishing Co.,* 312 U. S. 426 (1941).

A copy of the entire record in this case, as certified to be true and correct by the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, is hereby

furnished as a Transcript of Record, and made a part of this application, in compliance with Rule 38, paragraph 1, of the rules of this Court.

The Questions Presented.

This case presented the following questions to the National Labor Relations Board and to the United States Circuit Court of Appeals:

1. Whether the National Labor Relations Board possesses jurisdiction to hear this case and issue an order therein, where the Wisconsin Labor Relations Board first assumed jurisdiction and dismissed the case before the National Labor Relations Board took cognizance of or attempted to assume jurisdiction.
2. Whether the National Labor Relations Board's Findings of Fact, Conclusions of Law, and Order are supported by substantial evidence.
3. Whether Section 8(1) of the National Labor Relations Act may be construed, consistently with the first Amendment to the Constitution of the United States, to embrace as an unfair labor practice an employer's public expression of his views on labor relations in general condemnation of union racketeering and interference without specific reference to any one union or racketeer.
4. Whether, if the last question be answered in the affirmative, such public expression of opinion here did constitute an unfair labor practice within Section 8(1).
5. Whether an employer may be held responsible for the expression of opinion on labor relations of a minor supervisory employee, with power only to recommend hiring and firing, and with no authority from the employer or knowledge by the employer in regard to the making of such statements.
6. Whether, where the Findings indicate both a legitimate and an illegitimate motivation for the acts complained of, the Board and the Court may properly segregate by conjecture the illegitimate motive, and conclude thereon that an unfair labor practice had been committed.

7. Whether, upon Findings that the employer has violated Sections 8(1), (3) of the Act, the Board may validly order such employer to cease and desist from violation of any and all provisions and sections of the Act.

8. Whether the Board may validly order the reinstatement with back wages of employees guilty of violation of the important rules of the company and of the criminal statutes of the State of Wisconsin.

9. Whether the Board may validly order the payment of back wages to employees discriminatorily discharged, laid off, or locked out, where the Board unreasonably permits such contingent liability to accumulate over an undue length of time before rendering its Order or seeking enforcement thereof.

10. Whether the Board may validly order the employer to post notices stating that the employer will not engage in the unfair practices from which it is ordered to cease and desist, thereby admitting liability and guilt.

Reasons Relied on for the Allowance of the Writ.

1. The decision of the Circuit Court of Appeals, holding that the National Labor Relations Board had jurisdiction to reopen the case after the Wisconsin Labor Relations Board concluded its administration and disposed thereof, involves an important question of Federal law which has not been, but should be, settled by this Court.

2. The decision of the Circuit Court of Appeals, holding that this employer's public expression of his views on labor relations in general condemnation of union racketeering and interference, without specific reference to any one union or racketeer, is an unfair labor practice under Section 8(1) of the National Labor Relations Act, and constitutes substantial evidence to support a finding of an unfair labor practice under Section 8(3) of the Act in regard to the discharge, lock-out, and lay-off of employees, (a) is a decision of a Federal question that in a way probably

is in conflict with the decisions of this Court in *National Labor Relations Board* v. *Virginia Electric & Power Company,* 86 L. Ed. (Adv. Op.) 306 (1941), and *National Labor Relations Board* v. *Sands Mfg. Co.,* 306 U. S. 332 (1939), (b) is in conflict with decisions of various Circuit Courts of Appeals, on the same matter, as follows:

(1) With its own decision in the case of *Foote Bros. Gear and Machine Corp.* v. *National Labor Relations Board,* 114 Fed. (2d) 611 (C. C. A. 7th, 1941); rev'd., on another ground, 311 U. S. 620 (1941).

(2) With the decision of the Circuit Court of Appeals for the Sixth Circuit, in the case of *National Labor Relations Board* v. *Ford Motor Co.,* 114 Fed. (2d) 905 (C. C. A. 6th, 1940); cert. den. 312 U. S. 689 (1941).

(3) With the decision of the Circuit Court of Appeals for the Ninth Circuit, in the case of *National Labor Relations Board* v. *Union Pacific Stages,* 99 Fed. (2d) 153 (C. C. A. 9th, 1938).

(4) With the decision of the Circuit Court of Appeals for the Tenth Circuit, in the case of *National Labor Relations Board* v. *Walter Stover,* 114 F. (2d) 513 (C. C. A. 10th, 1940),

and, (c) is in conflict with the decision of the Wisconsin Supreme Court, in the case of *Wisconsin Labor Relations Board* v. *Fred Rueping Leather Company,* 228 Wis. 473 (1938), on the same matter, under identical legislation contained in the first Wisconsin Labor Relations Act, Chapter 111, Wisconsin Stats., 1937, and the present Wisconsin Employment Peace Act, Chapter 111, Wisconsin Stats., 1939, thus presenting serious conflict in interpretation between the State and Federal Statutes, the uniform administration of which is essential in this vastly important field.

3. The decision of the Circuit Court of Appeals, holding that this employer is charged with the expressions of opinion on labor relations made by a minor supervisory employee, with power only to recommend hiring and firing, and with no authority from the employer or knowledge by the employer in regard to the making of such statements,

(a) is a decision of a Federal question in a way probably in conflict with the decision of this Court in *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332 (1939), and (b) is in conflict with decisions of various Circuit Courts of Appeal on the same matter, as follows:

(1) With its own decision in the case of *National Labor Relations Board* v. *Falk Corporation*, 102 F. (2d) 383 (C. C. A. 7th, 1939), rev'd. on other grounds 308 U. S. 453 (1940).

(2) With the decision of the Circuit Court of Appeals for the Second Circuit in the case of *Ballston-Stillwater Knitting Co., Inc.* v. *National Labor Relations Board*, 98 Fed. (2d) 758 (C. C. A. 2nd, 1938).

(3) With the decision of the Circuit Court of Appeals for the Third Circuit, in the case of *Quaker State Refining Corp.* v. *National Labor Relations Board*, 119 F. (2d) 631 (C. C. A. 3rd, 1941).

(4) With the decision of the Circuit Court of Appeals for the Fourth Circuit, in the cases of *Ashville Hosiery Co.* v. *National Labor Relations Board*, 108 F. (2d) 288 (C. C. A. 4th, 1939); and *National Labor Relations Board* v. *Mathieson Alkali Works*, 114 F. (2d) 796 (C. C. A. 4th, 1940).

(5) With the decision of the Circuit Court of Appeals for the Fifth Circuit in the case of *National Labor Relations* v. *Tex-O-Kan Flour Mills Co.*, 122 F. (2d) 433 (C. C. A. 5th, 1941).

(6) With the decision of the Circuit Court of Appeals for the Sixth Circuit, in the cases of *National Labor Relations Board* v. *Sparks-Withington Company*, 119 F. (2d) 78 (C. C. A. 6th, 1941), and *Midland Steel Products Company* v. *National Labor Relations Board*, 113 F. (2d) 800 (C. C. A. 6th, 1940).

(7) With the decision of the Circuit Court of Appeals for the Eighth Circuit, in the case of *Kupples Company Manufacturers* v. *National Labor Relations Board*, 106 F. (2d) 100 (C. C. A. 8th, 1939).

4. The Decision of the Circuit Court of Appeals, holding that, where the Board finds both a legitimate and illegitimate motivation for the acts complained of, it may

guess that the illegitimate motive was the operative cause, and conclude thereon that an unfair labor practice had been committed, (a) is in conflict with the decisions of the Circuit Court of Appeals for Eighth Circuit, in the case of *Bussmann Manufacturing Company* v. *National Labor Relations Board,* 111 F. (2d) 783 (C. C. A. 8th, 1940), and (b), is in conflict with the decision of the Wisconsin Supreme Court in the case of *Wisconsin Labor Relations Board* v. *Fred Rueping Leather Company,* 228 Wis. 473 (1938), on the same matter, under identical legislation contained in the first Wisconsin Labor Relations Act, Chapter 111, Wisconsin Stats., 1937, and the present Wisconsin Employment Peace Act, Chapter 111, Wisconsin Stats., 1939, thus presenting serious conflict in interpretation between Federal and State Statutes, the uniform administration of which is essential in this vastly important field.

5. The decision of the Circuit Court of Appeals, holding that the Board may validly order the employer to cease and desist from violations of all of the provisions of the National Labor Relations Act, upon a mere showing of violations of Sections 8(1) and 8(3) of that Act, (a) is a decision of a Federal question in a way probably conflicting with the decision of this Court in *National Labor Relations Board* v. *Express Publishing Company,* 312 U. S. 426 (1941), and (b) is in conflict with the decisions of the various Circuit Courts of Appeals, on the same matter, as follows:

(1) With the decision of the Circuit Court of Appeals for the Fifth Circuit, in the cases of *Globe Cotton Mills* v. *National Labor Relations Board,* 103 F. (2d) 91 (C. C. A. 5th, 1939), and *National Labor Relations Board* v. *West Texas Utilities Company,* 119 F. (2d) 683 (C. C. A. 5th, 1941).

(2) With the decision of the Circuit Court of Appeals for the Ninth Circuit, in the case of *National Labor Relations Board* v. *Carlisle Lumber Company,* 99 F. (2d) 533 (C. C. A. 9th, 1938); cert. den. 306 U. S. 646 (1939).

(3) With the decision of the Circuit Court of Appeals for the Tenth Circuit, in the case of *National Labor Relations Board* v. *Continental Oil Company*, 121 F. (2d) 120 (C. C. A. 10th, 1941).

6. The decision of the Circuit Court of Appeals, holding that the Board may validly order the reinstatement, with back wages, of employees guilty of violations of the important rules of the company and of the criminal statutes of the State of Wisconsin, (a) is a decision of a Federal question in a way probably in conflict with the decisions of this Court in *National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240 (1939), and *Southern S. S. Co.* v. *National Labor Relations Board*, 62 S. Ct. 886 (1942), and (b) is in conflict with the decisions of the various Circuit Courts of Appeals, on the same matter, as follows:

(1) With the decision of the Circuit Court of Appeals for the Third Circuit, in the case of *Republic Steel Corp.* v. *National Labor Relations Board*, 107 F. (2d) 472 (C. C. A. 3rd, 1939).

(2) With the decision of the Circuit Court of Appeals for the Fourth Circuit, in the cases of *Martel Mills Corp.* v. *National Labor Relations Board*, 114 F. (2) 624 (C. C. A. 4th, 1940), and *Standard Lime and Stone Company* v. *National Labor Relations Board*, 97 F. (2d) 531 (C. C. A. 4th, 1938).

(3) With the decisions of the Circuit Court of Appeals for the Fifth Circuit, in the cases of *Peninsular and Occidental S. S. Co.* v. *National Labor Relations Board*, 98 F. (2d) 411 (C. C. A. 5th, 1938); cert. den. 305 U. S. 653 (1939), and *National Labor Relations Board* v. *West Texas Utilities Company*, 119 F. (2d) 683 (C. C. A. 5th, 1941).

(4) With the decisions of the Circuit Court of Appeals for the Sixth Circuit, in the cases of *National Labor Relations Board* v. *Indiana and Michigan Electric Company*, 124 F. (2d) 50 (C. C. A. 6th, 1941); cert. applied for 4-11-42, docket 1137; and *National*

Labor Relations Board v. *Empire Furniture Corp.*, 107 F. (2d) 92 (C. C. A. 6th, 1939).

(5) With the decision of the Circuit Court of Appeals for the Ninth Circuit, in the case of *National Labor Relations Board* v. *Union Pacific Stages*, 99 F. (2d) 153 (C. C. A. 9th, 1938).

7. The decision of the Circuit Court of Appeals, holding that the Board may validly order the payment of back wages to employees discriminatorily discharged, laid-off, or locked-out, where the Board unreasonably and inequitably permits such contingent liability to accumulate over an undue length of time before rendering its order or seeking enforcement thereof, is a decision in conflict with the decisions of various Circuit Courts of Appeals, on the same matter, as follows:

(1) With its own decision in the case of *National Labor Relations Board* v. *Mall Tool Company*, 119 F. (2d) 700 (C. C. A. 7th, 1941).

(2) With the decision of the Circuit Court of Appeals for the Third Circuit, in the case of *National Labor Relations Board* v. *Wilson Line, Inc.*, (C. C. A. 3rd, 1941), ____ F. (2d) ____, 4 C. C. H. Labor Cases No. 60,689.

(3) With the decision of the Circuit Court of Appeals for the Fifth Circuit, in the case of *Tex-O-Kan Flour Mills Company* v. *National Labor Relations Board*, 122 F. (2d) 433 (C. C. A. 5th, 1941).

8. The decision of the Circuit Court of Appeals, holding that the Board may validly order the employer to post notices, stating that the employer will not engage in the unfair practices from which it is ordered to cease and desist, thereby requiring an admission of liability and guilt, is in conflict with the decisions of the various Circuit Courts of Appeals, on the same matter, as follows:

(1) With the decision of the Circuit Court of Appeals for the Fourth Circuit, in the case of *A. S. Abell & Company* v. *National Labor Relations Board*, 97 F. (2d) 951 (C. C. A. 4th, 1938).

(2) With the decision of the Circuit Court of Appeals for the Sixth Circuit, in the case of *National Labor Relations Board* v. *Louisville Refining Co.*, 102 F. (2d) 689 (C. C. A. 6th, 1939); cert. den. 308 U. S. 569 (1939).

Prayer for Writ.

WHEREFORE, your petitioner prays that a Writ of Certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this Court for review of determination a full and complete Transcript of Record, and all of the proceedings of the said Circuit Court of Appeals had in the case numbered and entitled on its docket, No. 7689, *National Labor Relations Board, Petitioner,* v. *Algoma Net Company, Respondent,* to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States; and that the judgment therein of said Circuit Court of Appeals be reversed by the Court, and that your petitioner may have such other and further relief as this Honorable Court may deem just and proper.

Dated May 21, 1942.

ROBERT C. BASSETT,
Counsel for Petitioner.